IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 33554 OF 2006(T)

RCRP.4/2006 OF ADDL. RENT CONTROL APPELLATE AUTHORITY, ALAPPUZHA.
RCP.51/1990 OF RENT CONTROL COURT, ALAPPUZHA
(EA 37/04 IN EP 198/94)

PETITIONER:

G.DINESAN,
MANAPPALLISSERIL HOUSE,
THONDANKULANGARA, ALAPPUZHA.

BY ADV. SRI.JOMY GEORGE

RESPONDENTS:

1. DEVAYANI AMMA,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

2. D.SARASAMMA,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

3. S.K.PREMACHANDRAN,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

4. D.SWARNALATHA,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

5. D.JYOTHIMATHI,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

6. S.K.VINACHANDRAN,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

7. S.K.KISHORKUMAR,
SANTHI BHAVAN, MULLAKKAL, ALAPPUZHA.

8. S.K.SUDHEER KUMAR,
SANTHI BHAVAN, MULLAKKAL,
ALAPPUZHA.

BY ADV. SRI.P.SANTHALINGAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1	**TRUE COPY OF THE ORDER PASSED BY THE RENT CONTROLLER IN R.C.P. NO. 51/1990 DATED 30.9.1992.**
EXT.P2	**TRUE COPY OF THE ORDER PASSED IN E.A. NO. 37/2004 DATED 7.8.2006.**
EXT.P3	**TRUE COPY OF THE ORDER PASSED BY THE RENT CONTROL APPELLATE AUTHORITY IN R.C.P. NO. 4/2006 DATED 9.10.2006.**

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.P.(C) NO. 33554 OF 2006

DATED THIS, THE 2ND DAY OF APRIL, 2007.

J U D G M E N T

Antony Dominic, J.

The prayer made in this writ petition is to quash Ext.P3 order passed by the Rent Control Appellate Authority, Allappuzha and to restore Ext.P2 order passed by the Principal Munsiff's Court, Alappuzha in E.A. No. 37/2004 in E.P. 198/1994 in R.C.P. 51/1990.

2. By Ext.P3 order, the Revision Petition filed by the landlords have been allowed by the Appellate Authority and setting aside Ext.P2 the order of the Principal Munsiff, Alappuzha, the matter has been remitted back to that court for rendering a decision on the suitability of a room in the up stair on the western side of the building in question against a room in the Ground Floor claimed by the tenant/writ petitioner.

3. The facts of the case are that by Ext.P1 order, the Rent Control Petition filed by the landlords invoking ground under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent) Control Act, 1965 was disposed of directing the landlords to complete construction of the building within one

year from the date of getting possession of the building and to provide rooms on the western side of the building to the counter petitioner with liability to pay fair rent. It is stated that although reconstruction of the building was completed, the writ petitioner/tenant was not given a room as directed by the Rent Control Court. Accordingly the tenant filed E.A. 37/2004 which resulted in Ext.P2 order directing the landlords to provide any one of the rooms situated on the western side of the ground floor of their newly constructed shopping complex within one month by receiving rent of Rs. 1,500/- as an interim arrangement until fair rent is fixed in a proper adjudication proceedings before the Rent Control Court. It was aggrieved by the said order of the Execution Court that the landlords had filed R.C.R.P. 4/2006 which resulted in Ext.P3 order remanding the matter in the manner as stated above.

4. During the course of hearing, Sri. Santhalingam, learned counsel for the landlords submitted that the direction in Ext.P1 order was only to complete construction of the building within one year from the date of getting vacant possession and that the tenant shall be given a room on the western side of the building and that such a room in the first floor of the building has been offered, but not accepted by the tenant. As against this submission, learned counsel for the tenant refers to Ext.P1 order itself and

the undertaking given by the landlords to the Rent Control Court which is also recorded in the order. We find that the said undertaking is to the effect that there are three rooms on the western side of the building and according to the landlords, those rooms will be given to the counter petitioners in Ext.P1. The rooms mentioned above are obviously in the ground floor and this is evident from the succeeding sentences in the order itself. In view of the undertaking so given by the landlords to the Rent Control Court, we do not find any force in the submission made on behalf of the landlords.

5. That apart, we also note from Ext.P2 order of the Execution Court that the dispute was mainly on the rate of rent that is payable by the tenant on being re-inducted in to the building. It was accordingly, that the Court had fixed Rs. 1,500/- subject to fair rent to be fixed by the Rent Control Court. It is at the appellate stage that the landlord raised a contention that his obligation was only to provide a room and that the one in the first floor is sufficient compliance of Ext.P1 order. In our view, such a contention ought not have been permitted by the Appellate Authority. Therefore, in the factual situation as above, there is no scope for remand for examining the suitability of the room in the First Floor, as has been done in Ext.P3 order passed by the Appellate Authority.

6. Accordingly, we hold that the landlords have the obligation to

provide the tenant a room in the ground floor itself as required in the Act and Ext.P3 is quashed. However taking note of the commercial importance of the area, lapse of time and the enhancement in the rent that would have undergone in the locality, we hold that the tenant is liable to pay the revised rent. Taking in to account, the submissions made by both sides, we direct the tenant to pay Rs. 2,000/- (two thousand) per month on an ad hoc basis. It will be open to the tenant to move the Rent Control Court to get the fair rent fixed and future payment of rent shall be as per the order of the Rent Control Court. It is directed that the landlord shall make available the room on the western portion of the building in the ground floor as undertaken by them in Ext.P1 and as directed above within a period of one month from today.

The writ petition will stand disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-